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September 3, 2024

Via ECF

Honorable Paul A. Engelmayer
United States District Judge
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: ***In re: One Apus Container Ship Incident on November 30, 2020***
1:22-md-03028-PAE (lead case)

Dear Judge Engelmayer,

We are attorneys for Chidori Ship Holding LLC and Jessica Ship Holding SA, making restricted appearances as Owners and bareboat charterers, respectively, of the M/V ONE APUS (collectively, "Owners"). We write jointly on behalf of the Owners, Cargo Interests, and NVOCC Interests to provide a summary status update on the parties' efforts.

Issues Requiring Attention

As previously reported, the parties continue to work cooperatively and there is presently no dispute requiring immediate judicial assistance. There remain several issues that the parties are working through before applying for help from the Court. Again, we note the following:

a) Delay in the execution of settlement documents

At times, certain parties have been slow to respond to requests for documents and information necessary to complete the adjustment of damages for a limited number of claims. After prompting, these parties are usually responsive.

Overall, it is still currently taking three to four weeks (or longer with certain parties) for a release to be fully signed by the various parties despite multiple follow-ups. Cargo interests are still considering their options to address the delays.

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For 5 legal actions, Your Honor granted the request for a referral to Magistrate Judge Moses. She conducted an initial conference and scheduled an in-person conference for late September. The issue with one legal action was resolved. The issues with the remaining four should be resolved over the course of the next two weeks. We intend to update Magistrate Judge Moses in mid-September and thank Your Honor for the assistance.

b) Disagreement on legal issues

There still remain certain legal issues being discussed between the Owners and Cargo Interests concerning the recoverability of certain categories of damage and the application of the US COGSA package limit. The affected parties in at least two actions anticipate requesting the assistance of a US Magistrate Judge by separate letter, if they are unable to resolve their disputes in short order.

c) Pace of the settlement process

The pace of settling claims has dipped a little since the joint status letter on August 1, 2024 [ECF No. 646]. Even so, at the current pace, which could change, the parties anticipate that it will still take several more months to settle and dismiss all of the claims included in Schedule C of the Settlement Agreement.

d) Claims on extension

As noted in the last update, there remain certain container claims that Owners excluded from the Settlement Agreement and that are not yet in suit. Cargo interests have submitted demands and full claim supports to both vessel interests and VOCC interests as to these claims. To date, these claims have not been addressed. Accordingly, some of these claims will be filed in new action(s) in the MDL proceeding in September 2024.

e) Potential default motions

One Cargo Interest has filed a motion for default judgment against a non-appearing NVOCC [ECF No. 614]. The Clerk's office erroneously rejected the filing as premature, without recognizing that the originating court entered a certificate of default against the NVOCC prior to the MDL transfer. Cargo interests have obtained a second certificate of default from the SDNY and will be re-submitting the motion.

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Settlement Status

We again include the revised summary of *Claims included in the Settlement Agreement Schedule C*. As of now, all or some part of 55 actions have been settled in principle and releases are being exchanged and executed. For now, dismissals have only been filed in 16 actions. The balance of the actions is still actively being discussed.

Specifically, Owners and Cargo Interests have reached an agreed settlement sum for 550 out of approximately 1,035 containers in Schedule C, with 73 additional containers settled since the joint status letter on August 1, 2024. The majority of the container cargo claims continue to remain under discussion with proposals in the works or documents still outstanding. There are still only 3 legal actions in which claim documents have not yet been provided to Owners.

For the *Claims not included in the Settlement Agreement*, there are no changes for the moment. The *NVOCC actions* remain the same for the time being.

Modification of Deadlines

As we have been reporting, the parties continue to focus on resolving the hundreds of claims in Schedule C of the Settlement Agreement. This effort involves varying levels of coordination and cooperation of the parties to the MDL to adjust the claims and execute all the necessary settlement documents. Proceeding with discovery now will only further complicate the situation and impede progress.

Accordingly, the parties respectfully request an additional modification of about 2-months of certain dates in Order No. 5 [ECF No. 574].

Specifically, that:

1) For all actions that are part of this MDL, including those claims in Schedule C of the Settlement Agreement and those claims which are currently excluded from the settlement, the pause in litigation activity, i.e., formal discovery and motions (except for motions for default judgement, as discussed above in section (e)), is hereby extended to **November 8, 2024**; and

2) For any action that is part of this MDL that is not being fully resolved under the terms of the Settlement Agreement, as well as any new actions that become part of this MDL and are not fully resolved before, a proposed Civil Case Management Plan and Scheduling Order will be submitted no later than **November 15, 2024**.

We requested an extension of this kind before and Your Honor granted it. We productively used that time to resolve more claims. We intend to do the same here.

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We thank Your Honor for your consideration and continued assistance. If there are any questions or concerns, please do not hesitate to contact the undersigned.

Respectfully submitted,

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CC by ECF to all counsel of record